

REMARKS

Initially, applicant would like to thank the Office for its withdrawal of the previous rejections.

Claims 1, 3-13, 15-20 and 22-43 are pending in the application. Claims 3, 10, 11, 16, 18-20, 23-33 and 41-43 have been previously withdrawn. Claims 1, 4-9, 12, 13, 15, 17, 22, and 34-40 are newly rejected. Currently claims 1, 36 and 37 are amended. Applicant respectfully requests favorable reconsideration for the reasons given below.

35 U.S.C. §102/103 Rejections

Claims 1, 5, 12, 13, 22 and 35-37 were newly rejected under 35 U.S.C. §102 as anticipated by, or in the alternative under 35 U.S.C. §103 as obvious over, United States Patent Number 3,254,510 (“Lesley”).

Anticipation under 35 U.S.C. §102 requires a disclosure of “each and every element as set forth in the claim” (MPEP 2131). Similarly, obviousness under 35 U.S.C. §103, requires that the prior art “must teach or suggest all the claim limitations” (MPEP 2143).

1. Lesley Fails to Disclose or Suggest Stitch Evasion

Applicant respectfully submits that Lesley fails to disclose or suggest the use of *stitch evasion*. Lesley does disclose that in some instances a “third warp can be knit such as to compliment either the warp knit under high tension or the warp knit under relatively low tension, or the third warp can be simply floated into the fabric for additional effects”. However, Lesley makes no disclosure that the floated yarn is *stitch evaded*, in particular, Lesley makes no disclosure that the floated yarn is free to avoid being pinned down by bar yarn overlap (as discussed, for example, in the specification on page 24). Most importantly, a third bar yarn simply *floated* into the fabric would not be visible on either face or back fabric surfaces because it would be sandwiched in between the front bar yarn and the back bar yarn, thereby lying in the center of the fabric and would not be present on either fabric surface. For at least this reason, applicant respectfully requests favorable reconsideration of the instant claims.

In the Advisory Action of 18 December 2007, the Office contends that Lesley’s column 5, lines 25-40 discloses the front and back bars as seen in applicant’s Figures 1 and 2, and that

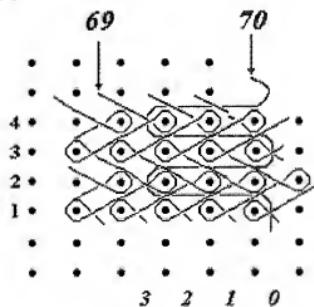
Lesley discloses that a third warp may be floated in (column 4, lines 46-59). Despite these disclosures in Lesley, applicant respectfully submits that nothing in Lesley's entire disclosure, including the above paragraphs, in isolation or combination, suggests the structure of the present invention, or the benefit achieved by applicant's invention.

Regarding the front and back bar patterns disclosed by Lesley (column 5, lines 25-40), Lesley is only disclosing "float forming" patterns, e.g., 1-0,1-2 back and 2-3,1-0 front. The purpose of these patterns is to create large segments of yarn on the front bar that can be piled. Lesley is using these patterns to make a napped or piled surface on one face of the fabric.

More importantly, however, even if Lesley's front and back bars were combined with a middle bar and a floated yarn, there is still no suggestion or motivation to produce the claimed invention. Applicant has generated the diagram below for the Office's convenience to demonstrate just one of the numerous ways one of ordinary skill in the art would combine Lesley's disclosed "float forming patterns" with a middle bar floating yarn or laying-in yarn.

Normal Lay-In Practice

Normal Lay-in - Middle Bar (70)
Moves Counter To Front Bar(69)
Entire length of Yarn 70 is Pinned
Down By Yarn 69 and held in center
of fabric.



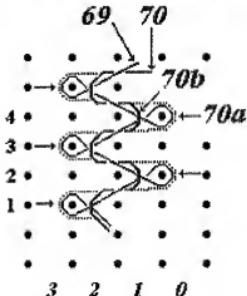
Front Bar 1 : 2-3/1-0//
Middle Bar 2 : 0-0/3-3//

As seen, the laid-in yarn 70 is clearly pinned down by overlapping yarn 69 and cannot be forced to the face of the fabric, as performed by the present invention. For at least these reasons, applicant respectfully requests favorable reconsideration.

Applicant has also generated a stitch evasion diagram, showing for illustrative purposes only the front and middle bar of Figure 1 in the application as filed. Applicant respectfully believes the Office will agree that this structure is in sharp contrast with the Disclosure of Lesley.

Stitch Evasion Technique

*Middle Bar 2(Yarn 70) Stitch Evades
Front Bar 1(Yarn 69) To Surface and
Appear on Fabric Face over Top of
Yarn 69. Dotted line 70a shows yarn
path before evasion, 70b at final rest.*



**Front Bar 1 : 2-3/1-0//
Middle Bar 2 : 3-3/0-0//**

As seen, middle bar yarn 70 stitch evades the front bar 1 and rests on the surface as shown by portion 70b. Again, applicant respectfully submits that this construction is not shown or suggested by Lesley.

Lesley also fails to disclose or suggest other limitations of the present invention.

2. Lesley's Yarns are "Inelastic" as Defined by the Specification

Applicant respectfully submits that Lesley fails to disclose or suggest the “elastomeric or stretch” limitations of the instant claims. As defined by applicant’s specification (emphasis added):

Inelastic yarns...have elongations at break of less than 100% and may be any conventional textile yarn, either continuous-filament (textured or nontextured) or staple yarns or combinations of the two types, including both synthetic fiber and natural fibers, such as nylon, polyester, wool, and cotton (page 16).

Applicant respectfully submits that all of the yarns disclosed or suggested by Lesley are *inelastic, conventional* yarns according to the present application. Lesley only discloses yarns that are “capable of from about 10-50% or more elastic elongation before breaking” (col. 1, lines 52-55) and that are “preferably capable of about 40 or 50% or more elastic elongation” (col. 5, line 7). For at least this reason, applicant respectfully requests favorable reconsideration of the instant rejections.

Despite the fact that Lesley’s yarns are *inelastic* as defined by the present application, in an effort to further clarify the distinction, applicant has amended claims 1, 36 and 37 to recite that elastomeric or stretch yarns of the present invention have an elongation at break of greater than 100%. Lesley makes no disclosure or suggestion of this limitation. For at least this reason, applicant respectfully requests favorable reconsideration of the instant claims.

Applicant also respectfully submits that one of ordinary skill in the art would have no motivation to replace Lesley’s rigid yarns with yarns having an elongation at break of greater than 100%.

Lesley also fails to disclose or suggest other limitations of the present invention.

3. Lesley Provides No Motivation for Using an Elastomeric or Stretch Yarn to Control the Location of a Stitch Evaded Yarn

Lesley makes no disclosure of an *elastomeric or stretch yarn forcing a stitch evaded yarn to the second side*. Applicant is forcing the stitch evaded yarn to the surface of the second side to create a structure with unique and unexpected visual and physical characteristics, for example, in

preferred commercial embodiments, the present invention is used to make athletic garments having a “higher reflective surface” or metallic appearance as discussed in the specification as filed. In complete contrast, Lesley is only directed to conventional *pile* fabrics. MPEP 2143 provides that “it is well settled that the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure. Lesley, at best, only discloses a floated yarn. Lesley makes no disclosure of stitch evasion and provides no motivation for achieving the structure or function that applicant achieves. Applicant’s illustration above showing a floated construction, is only one of the large number of floated constructions that would be produced without (1) *stitch evading* and without (2) forcing the *stitch evaded yarn to the second side*. For at least the reasons that (1) Lesley provides no *specific* motivation for a stitch evaded yarn, and (2) Lesley provides no *specific* motivation to use an elastomeric yarn to force a stitch evaded yarn to the second side, applicant respectfully requests favorable reconsideration.

35 U.S.C. §103 Rejections

Claims 14 and 15 were rejected under 35 U.S.C. §103 as obvious over Lesley in further view of United States Patent No. 4,879,169 (“Zafiroglu”). Applicant submits that Zafiroglu is unable to fill the above mentioned voids, and respectfully requests favorable reconsideration for at least the reasons given above.

Claims 6-9 were rejected under 35 U.S.C. §103 as obvious over Lesley in further view of either United States Patent No. 4,574,397 (“Dennard”) or United States Patent No. 5,123,117 (“Prendergast”). Applicant submits that neither Dennard nor Prendergast, nor their combination, is able to fill the above mentioned voids, and respectfully requests favorable reconsideration for at least the reasons given above.

Claim 17 was rejected under 35 U.S.C. §103 as obvious over Lesley in further view of United States Patent No. 5,916,273 (“Hepfinger”). Applicant submits that Hepfinger is unable to fill the above mentioned voids, and respectfully requests favorable reconsideration for at least the reasons given above.

Claim 34 was rejected under 35 U.S.C. §103 as obvious over Lesley. Applicant respectfully requests favorable reconsideration for at least the reasons given above.

Claims 38-40 were rejected under 35 U.S.C. §103 as obvious over Lesley in further view of United States Patent No. 5,855,124 (“Donaghy”). Applicant submits that Donaghy is unable to fill the above mentioned voids, and respectfully requests favorable reconsideration for at least the reasons given above.

Claims 1, 4, 5, 12, 13, 15, 22 and 34-40 were rejected under 35 U.S.C. §103 as obvious over United States Patent No. 3,041,861 (“Kasey”) in view of Zafiroglu, in view of Lesley. For at least the reasons given above, and in particular that Lesley fails to disclose or suggest stitch evasion and that Lesley’s floated yarn is trapped and cannot be forced *to the second side of the fabric*, applicant respectfully requests favorable reconsideration of the instant rejections.

Claims 6-9 were rejected under 35 U.S.C. §103 as obvious over Kasey in view of Zafiroglu, in view of Lesley, in further view of either Dennard or Prendergast. For at least the reasons that Lesley fails to disclose or suggest stitch evasion and that Lesley’s floated yarn is trapped and cannot be forced *to the second side of the fabric*, applicant respectfully requests favorable reconsideration of the instant rejections.

Claim 17 was rejected under 35 U.S.C. §103 as obvious over Kasey in view of Zafiroglu, in view of Lesley, in further view of Hepfinger. Applicant respectfully requests favorable reconsideration of the instant rejection for the reasons previously indicated.

Conclusion

Applicant submits that by this amendment he has placed the case in condition for allowance and such action is respectfully requested. If, however, any issue remains unresolved, Applicant's attorney would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,

R. Kody Jones
Registration No. 57,237
MacCord Mason PLLC
P. O. Box 2974
Greensboro, NC 27402
(336) 273-4422

Date: 13 February 2007
File No.: 7373-004